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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No. 668

ALBERTA WEBER DEJONG,

Petitioner,

vs.

RUTH TIETSORT,

Respondent.

ANSWER AND BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

JOHN J. YOWELL,
Counsel for Ruth Tietsort, Respondent.

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent, Ruth Tietsort, respectfully submits this answer and supporting brief in opposition to petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

Report of Opinion Below.

The opinion of the Circuit Court of Appeals for the Seventh Circuit which petitioner seeks to have reviewed is reported in 131 F. (2) 448.

Statement of the Matter Involved.

In the petition and supporting brief, petitioner is not always careful, in quoting the beneficiary clause in question, to give the exact and full wording thereof. For this reason, we deem it desirable to state at this point the full and exact clause involved:

> "In the event of the death of the insured, as herein provided, the amount set forth in Parts I, II, or III, for the loss of life, shall be payable to Mrs. C. S. DeJong (hereinafter called the beneficiary) relationship wife" (Tr. 6).

Petitioner's summary of the matter involved also fails to state the manner in which the case was originally brought to judgment. In the District Court, both petitioner and respondent filed motions for summary judgment based on a statement of agreed facts. Judgment was entered on the motion of respondent, Ruth Tietsort, for summary judgment. However, one of the allegations in the answer of Ruth Tietsort to the original bill of interpleader was denied by petitioner and was, therefore, not included in the statement of agreed facts on the basis of which the judgment was entered and the case argued in the Circuit Court of Appeals. This allegation was to the effect that it was respondent, Ruth Tietsort, who made the application for insurance, in which application it was she who designated Carroll S. DeJong as the insured and herself as beneficiary under the name and style of Mrs. C. S. DeJong (Tr. 2). This is pointed out here because throughout the petitioner's argument, it is assumed without foundation in fact by petitioner that the insured made the designation in question. As far as the facts before the court are concerned, the only pertinent statement is to the effect simply that when the policy was issued, Carroll S. DeJong was designated as the insured and the beneficiary was designated as appears above. However, be-

cause the law is so strong to the effect that the designation in question designated a specific beneficiary, whose identity remained at all times clear and unaltered, respondent has argued the points at issue as though it were to be taken for granted that the designation was made by the insured.

In discussing the fact findings on which the District Court (Pet. 3) and the Circuit Court of Appeals (Pet. 4) made their rulings, petitioner says that both courts found that, since the requirements of the policy for change of beneficiary were not complied with, no change was effected. This is misleading in that it fails to give proper emphasis to the fact that no effort was ever made to change the beneficiary, whether in compliance with the terms of the policy or not (Tr. 5, 23).

Questions Presented.

The facts before the Court present three questions:

(1) Whether the clause designating the beneficiary as "Mrs. C. S. DeJong (hereinafter called the beneficiary) relationship wife" designated a specific person, to wit, Ruth Tietsort, as beneficiary, or whether said clause designated the status or class of wife as beneficiary.

(2) In deciding that said beneficiary clause designated a specific person rather than a class or status, was the decision of the Circuit Court of Appeals in conflict with the applicable law of the State of Illinois?

(3) Having determined that the policy designated Ruth Tietsort as the beneficiary, did the Circuit Court of Appeals err in holding that no change or circumstance occurred to affect the vesting of Ruth Tietsort's rights under the policy upon the death of the insured?

The Circuit Court of Appeals held that the beneficiary clause in question designated a specific person, to wit,

respondent Ruth Tietsort, as the beneficiary; the court further found that no change or circumstance occurred to affect the vesting of the beneficiary's interest upon the death of the insured. In so holding, it is respectfully submitted that the court ruled in accordance with the facts in the case, the law of the State of Illinois, and the law of substantially every jurisdiction where the same or similar questions have been adjudicated.

Wherefore, respondent respectfully prays that the Court deny the petition for a writ of certiorari.

Summary of Argument.

I.

The designation "Mrs. C. S. DeJong, (hereinafter called the beneficiary), relationship wife", designated a specific person, Ruth Tietsort, as beneficiary. The addition of the word "wife" was merely *descriptio personae,* and did not limit the beneficiary to a person occupying any particular status. The fact that the words "hereinafter called the beneficiary" and the words "relationship wife" are added after the name "Mrs. C. S. DeJong" can only be construed as further marks of identification of a specific person designated as beneficiary and not as a designation of a class or status.

Continental Bank & Trust Co. v. *Sovereign Camp,* 169 La. 989, 126 So. 502, 504.

Day v. *Case,* 43 Hun (N. Y.) 179, 50 Sup. Ct. Rep. N. Y. 179, 180.

52 A. L. R. 395.

Griffiths, In re, 1 Ch. (Eng.) 739, 72 L. J. Ch. N. S. 330, 88 L. T. N. S. 547.

II.

Upon the death of the insured, Carroll S. DeJong, the rights of the beneficiary therein, Ruth Tietsort, immediately became vested and absolute, no change of beneficiary ever having been effected. Since no change of beneficiary was even attempted, the question as to the necessity for the endorsement of a change of beneficiary on the policy is irrelevant.

Freund v. *Freund,* 218 Ill. 189, 205.

III.

The divorce of Carroll S. DeJong, the insured, from Ruth Tietsort, the beneficiary, did not affect Ruth Tietsort's rights under the policy.

Begley v. *Miller,* 137 Ill. App. 278, 280-2.
Connecticut Mutual Life Insurance Co. v. *Schaefer,* 94 U. S. 457.
52 A. L. R., pp. 389, 390.

ARGUMENT.

I.

Before any approach can be made to the question of what the insured meant or intended, it is desirable that we examine carefully what the insured said. There are three parts in the beneficiary clause here in question: (a) Mrs. C. S. DeJong; (b) (hereinafter called the beneficiary); (c) relationship wife. It is respectfully submitted that in holding that this clause designated a specific person rather than a class or status, the court below not only ruled correctly but in accordance with every compulsion of grammar, common sense and the elementary principles of language. The words "(hereinafter called the beneficiary)" could only be taken as meaning the person previously designated; and further emphasis is added to the identification by describing the relationship of that person to the insured; some significance may also be attached to the fact that in the agreed statement of facts, it is clearly stated that by said designation, the defendant, Ruth Tietsort, was designated the beneficiary under said policy (Tr. 5).

Petitioner argues in her first proposition of law that "the designation by the insured, Carroll S. DeJong, of his beneficiary as 'Mrs. C. S. DeJong, relationship wife,' was a class designation of any wife of the insured" (Pet. 13).

As to the use of the word "wife" as part of the beneficiary designation, it may be well to quote the statement of the general proposition of law as stated in 52 A. L. R. at page 395, which was also aptly cited in the opinion below (Tr. 23):

> "The beneficiary being designated by name, the statement in connection therewith, that she is related to insured as 'wife', or the use of the word 'wife' as

> a further means of identification, is merely descriptive of her relationship to him, and does not in itself provide for payment to his widow only."

Petitioner has not cited a single Illinois case and there is no case either in Illinois or possibly in any other jurisdiction in which this proposition of law is questioned. The Illinois cases cited by petitioner are totally irrelevant to the issues in this case, as is more fully brought out later in this brief.

It is petitioner's main contention that in interpreting the clause in question as a specific rather than a class designation, the court was in error and held contrary to the Illinois law. However, the only case referred to in petitioner's brief which is in point is one in which the identical question was decided squarely in accord with the holding of the court below. That is the case of *Day* v. *Case,* 43 Hun (N. Y.) 179 (also cited as 50 Sup. Ct. Rep. N. Y. 179). In that case, the following facts were involved: On July 5, 1870, the Locomotive Engineers Mutual Insurance Association, a mutual benefit society, issued to H. M. Case a certificate of membership and policy of life insurance with the following clause:

> "all payments or benefits that may accrue or become due to the heirs of the person insured, by virtue of this policy, will be payable to Mrs. H. M. Case, or lawful heirs."

At the time the certificate was issued to Case, he had a wife living by the name of Amelia M. Case, and a daughter by the name of Inez H. Case. The wife, Amelia M., died September 12, 1879, and subsequently on February 3, 1882, the insured married Emma Case, the defendant. Subsequently, on May 29, 1885, the insured died leaving Emma, his widow, surviving and Inez H. his only child and heir at law. In deciding the respective rights of the daughter and the widow, the Court held, p. 180:

> "It is now contended that Mrs. H. M. Case was the

name of the defendant, his widow and that consequently, she is the beneficiary named in the certificate. That was not, however, her name at the time the certificate was issued. The name, Mrs. H. M. Case, at that time, was Amelia M. Case, and she must have been the person meant by Mr. Case in making the designation and the person named in the certificate. We can not assume that he then contemplated the death of his wife and his subsequent marriage to the defendant in this action * * *. It is urged that because the words 'Mrs. H. M. Case' were used, that it was intended that the certificate should mean one person at one time and another at another time; that it meant, Amelia M., at the time it was issued, but that it meant the defendant at the time of his death. Such, however, does not appear to us to have been the meaning of the instrument."

Petitioner quotes a criticism of this decision in 2 *Joyce on Ins.* (2nd Ed.) Sec. 830, page 1821.

As to the Joyce criticism, several considerations should be kept in mind. In the first place, Joyce makes clear that that case involved a certificate in a fraternal society and that "the object of these societies is to primarily provide for the widow of the member" (Pet. 21). In the case at bar, the policy is an ordinary policy of life or accident insurance. It may be doubted whether even Joyce would have questioned the validity of the holding had that case not involved a certificate in a fraternal society. However, even in his comment, immediately preceding the passage quoted by petitioner, Joyce states "there is certainly much to be said on both sides of this case and the reasons presented by the court are undoubtedly strong ones".

And, most significantly, when the identical question again arose before a court of last resort, years after Joyce's comment appeared in his 2nd Edition of 1917, it was again decided that the clause in question designated a specific person rather than a class or status, and this, despite the fact that a beneficial certificate was involved. That was

the case of *Continental Bank and Trust Company* v. *Sovereign Camp*, 169 La. 989, 126 So. 502. In that case, the clause in the certificate (issued by a mutual benefit society) designating the beneficiary reads as follows:

> "Three thousand dollars should his death occur after the second year of his membership, payable at his death to Mrs. E. L. Harper, Jr., bearing relation to him of wife, by the Sovereign Camp of the Woodmen of the World."

Thus the beneficiary clause under that certificate did not indicate the maiden name of the said Mrs. E. L. Harper, Jr. At the time of the said designation, the Mrs. E. L. Harper, Jr., was Mrs. Martha Ratcliff Harper. Subsequently Mrs. Martha Ratcliff Harper died and thereafter Mr. E. L. Harper, Jr., remarried. A contest ensued between the surviving widow and the children of the insured's first wife. The Court in disposing of the question of whether the beneficiary clause quoted above designated the beneficiary by class or as a specific person, makes the following significant ruling, at 126 So., p. 504:

> "It is conceded that, if the certificate had been made payable to Mrs. Martha Ratcliff Harper, Jr. who was the first wife of the insured, such a designation would have been sufficient to constitute the person named as the insured's beneficiary.
>
> "But the designation in the certificate of Mrs. E. L. Harper, Jr., as the beneficiary thereunder, was the designation of a specific person, for it can not be gainsaid that, at the time the certificate was issued, Mrs. Martha Ratcliff Harper, Jr., was the same person who was also known and designated as Mrs. E. L. Harper, Jr."

In the light of these authorities, it becomes difficult to extend any credit to petitioner's argument that the specific designations add nothing to the word "wife" (Pet. 16). On the contrary, it is the almost universal rule that the word "wife" does not affect the application of the bene-

ficiary clause where there are words of specific designation, as there are in the clause here under consideration.

As to the Illinois cases cited by petitioner, even a brief analysis demonstrates that these authorities have absolutely no relevance to the case at bar. One of the cases cited in petitioner's brief (Pet. 18) is *Modern Woodmen of America* v. *Allin,* 301 Ill. 119. As counsel for petitioner point out, that case involved a certificate in a benefit society. In that case the certificate was made payable by insured "at his death to wife and children". Perhaps the difference between this general classification of beneficiaries and the specific designation of the beneficiary in the case at bar is too clear to call for comment. And the Court in that case had before it the further fact that the beneficiary clause also designated "children" as beneficiaries, and the Court would not accept an interpretation that "children" did not include children born after the issuance of the certificate, which led to the conclusion that that was a class designation. We do not quarrel with or criticize this decision in any way except to say it has no bearing on the case at bar, where, as has been shown, the beneficiary was designated by name.

Another case cited by counsel for appellant is *Pike County Mutual Life Association* v. *Berry,* 214 Ill. App. 316 (Pet. 19). That case, like the "Modern Woodmen" case above discussed, also involved a benefit certificate which was payable to the "wife and children" of the insured. As the Court says, the "beneficiaries are not named but described". As a matter of fact when the class of beneficiaries were designated, they were not even in existence, insured having taken out the certificate before he was married! Even apart from the fact that these two cases involve certificates in mutual benefit societies, we earnestly submit that the manner in which the beneficiaries were therein designated is quite different from the designation

"Mrs. C. S. DeJong (hereinafter called the beneficiary) relationship wife".

Another case cited on the proposition in petitioner's brief (Pet. 20) is *In Re Browne's Policy*, 19 Times L. R. 99. Here again the beneficiary clause described the policy to be "for the benefit of his wife and children". It is of some importance to refer to appellant's own quotation from the language of the Court to the effect that "one is met by the presumption, which is rather of common parlance and common sense than of law, though it has been recognized by legal authority, that a married man speaking of his wife intends his wife at that time, and does not contemplate one whom he may marry after her death." In this case, too, as in *Modern Woodmen* v. *Allin*, 301 Ill. 119, and *Pike County, Etc.* v. *Berry*, 214 Ill. App. 316, the Court laid stress on the addition of the words "and children". Since the insured could not reasonably be supposed to have intended to benefit only the children living at the date of the policy, to the exclusion of afterborn children, it was reasonable to conclude there that the insured was providing for the persons occupying the status of wife and children at the time of the insured's death.

It is very interesting to observe how the Browne case just discussed was distinguished in *Re Griffiths* (1903) 1 Ch. (Eng.) 739, 72 L. J. Ch. N. S. 330, 88 L. T. N. S. 547, where a man having a wife and children effected insurance expressed to be "for the benefit of his wife, or, if she be dead, between his children in equal proportions", upon the ground that the policy in the Browne case was expressed to be for the benefit of wife "and" children, and not for the benefit of wife "or" children; and it was held that the presumption that a married man speaking of his wife intends his wife at that time was strengthened by the words "if she be dead", which seems to point to the wife who was living when the policy was effected; and consequently that a subsequent wife was not entitled to take.

Included in the statement of petitioner's first proposition of law is the assertion that in Illinois a policy of insurance is testamentary in character and speaks as of the time of the death of the insured. This point is barely mentioned in the body of the argument and does not appear again until the "Conclusion," yet it is included in the list of five questions which the petitioner conceives to have been presented to this court by the petition (Pet. 5).

Under the circumstances of the case at bar it should be adequate to answer that it is not so much a question of the time as of which the policy speaks, but of what it says. Continuing the figure of speech, under the law the policy was written to say that the woman today known as Ruth Tietsort should receive the benefits thereof upon the death of the insured. And no effort was ever made to make the policy say anything else.

However, we advert to this point principally because under petitioner's first proposition of law, petitioner cites the case of *Mutual Life Insurance Company* v. *Devine,* 180 Ill. App. 422. Here again this is the only reference to the case and there is no further mention or discussion of it in the brief or argument. In that opinion, at page 426, the Illinois court states:

> "In construing a contract the Court will, if necessary, put itself in the place of the parties and read the contract in the light of the objects they had in view and the circumstances surrounding them at the time it was made."

This is practically a universal rule and was one of the factors which led the court below to reach its conclusion that Ruth Tietsort was the beneficiary designated in the policy. It was also obviously one of the factors which led to the decision in *Day* v. *Case* and *Continental* v. *Sovereign Camp, supra.*

In the case at bar, every circumstance of the parties at the time the policy was issued and the manner in which

the designation was made leave no room for doubt that Ruth Tietsort was intended and named as the beneficiary under the policy.

II.

Petitioner's second point concerns itself with the question of whether a change of beneficiary had to be endorsed on the policy itself in order to become effective. As to the petitioner's argument that no such endorsement of change of beneficiary was necessary to make a change effective, the answer is two-fold: First, since no effort of any kind was made to change the beneficiary, it is irrelevant to discuss what circumstances might have made a change effective. Second, if the question were relevant, petitioner seeks to rely on two decisions of intermediate Appellate courts which, as the court below states, are at variance with the Illinois Supreme Court rule as announced in *Freund* v. *Freund*, 218 Ill. 189, at Page 205. The applicable legal principles are there announced as follows:

> "In the next place, although it may be true that the beneficiary has no vested right in the fund named in the policy during the life of the assured, and has no greater interest than a mere expectancy, yet, when the assured dies, the beneficiary acquires rights, which cannot be cut off except in the manner prescribed by the contract. If no other valid appointment has been made, that is to say, if no other selection of beneficiary has been made in the manner prescribed by the statute and the contract, before the assured dies, then upon his death, the beneficiary, whose selection was valid, or was in accordance with the provisions of the statute and the contract, has a vested interest in the fund."

Petitioner then seeks to fall back on the original point that no change of beneficiary was necessary because we are here dealing with a class or status designation. We

respectfully submit that this point has been adequately disposed of in the first part of our argument.

III.

The import of both the third and fourth points in petitioner's argument is that the divorce of the insured from the beneficiary took Ruth Tietsort out of the "class" to which the fund was made payable. This is clearly founded on the completely erroneous assumption that the policy as written designated a class or status as the beneficiary. Again, we submit that this question has been adequately disposed of under part one of respondent's argument.

Having properly found that Ruth Tietsort was originally specifically designated as the beneficiary, the court below then correctly went on to indicate that the divorce of the parties did not affect the rights of the beneficiary designated. As the court below states, "her rights were created by the policy of insurance; they were not created by marriage". See *Begley* v. *Miller,* 137 Ill. App. 278; *Connecticut Mutual Life Ins. Co.* v. *Schaefer,* 94 U. S. 457; annotations in 52 A. L. R. at Pages 289-90 where practically all of the authorities throughout the country are discussed and fully support the proposition as declared by the court below.

Under petitioner's fourth proposition of law, petitioner cites the cases of *Illinois Bankers' Life* v. *Collins,* 341 Ill. 548, and *Davis* v. *Metropolitan Life,* 285 Ill. App. 398. These cases are not discussed in the brief at all. However, it may be helpful to point out that these cases merely hold that during the lifetime of the insured, where the insured has the right to change the beneficiary, the beneficiary does not have a vested interest but a mere expectancy. Here again, it should suffice merely to say that the question of the nature of the beneficiary's interest during the lifetime of the insured is entirely beside the point after the

insured has died. Upon the death of the insured, the interest of the beneficiary designated became vested beyond question. *Freund* v. *Freund*, 218 Ill. 189.

Also cited in petitioner's brief under point four is the case of *Novotny* v. *Acacia Mutual Life Insurance Company*, 287 Ill. App. 361. That case merely holds, as petitioner's brief itself brings out, that where no beneficiary is named in the policy, the fund belongs to the insured's estate. It should be enough to say that this proposition is as irrelevant as it is commendable.

Conclusion.

When the policy was issued on March 2, 1926, Claimant Ruth Tietsort was therein designated as the beneficiary, by the name and style of "Mrs. C. S. DeJong (hereinafter called the beneficiary), relationship wife." Between that date and the death of the insured on November 30, 1940, nothing occurred to affect Ruth Tietsort's interest in the policy as beneficiary. Her interest in the proceeds therefore became vested and absolute on that date. The divorce of the parties did not affect Ruth Tietsort's interest as beneficiary. The decree of the Circuit Court of Appeals for the Seventh Circuit was in accord with the law of Illinois as well as practically all jurisdictions in which the questions at issue have been adjudicated.

WHEREFORE, respondent respectfully prays that the Court deny the petition for certiorari.

Respectfully submitted,

JOHN J. YOWELL,
Counsel for Ruth Tietsort, Respondent.